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No. 83-1965

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

RELIANCE MORTGAGE CORPORATION,
a Colorado Corporation,

Petitioner,

vs.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a National Banking Association,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTIONS PRESENTED

1. Does the Declaratory Judgment Act, 28 U.S.C. § 2201, create a new independent cause of action or only an alternative form of relief?
2. Did the District Court and Court of Appeals err in finding that the Amended Complaint of Petitioner Reliance Mortgage Corporation stated no cause of action?
3. Should this Court grant a writ of certiorari in a case which involves a completely personal business dispute and which presents no federal question, no unsettled question of federal law, no conflict among the circuits, nor any issue of significance to the law or society?

DESIGNATION OF CORPORATE RELATIONSHIPS

Continental Illinois National Bank and Trust Company of Chicago, a National Banking Association, filing this Brief in Opposition to Petition for Writ of Certiorari as respondent in this proceeding, states that:

All parties to this proceeding appear in the caption to the case.

This is its original Designation of Corporate Relationships.

Continental Illinois Corporation is the parent of Continental Illinois National Bank and Trust Company of Chicago.

Dated: June 29, 1984

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RELIANCE MORTGAGE CORPORATION,
a Colorado Corporation,

Petitioner,

vs.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a National Banking Association,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Respondent Continental Illinois National Bank and Trust Company of Chicago ("Respondent"), respectfully requests that this Court deny the petition of Reliance Mortgage Corporation ("Reliance") for a writ of certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinions of the United States District Court for the Northern District of Illinois, Eastern Division, and the United States Court of Appeals for the Seventh Circuit,

dismissing Reliance's Amended Complaint, have not been reported nor included in Reliance's Petition. Accordingly, copies of both opinions are contained in the Additional Appendix hereto.

STATEMENT OF THE CASE

The action arises out of a written Purchase Agreement dated May 17, 1979 between Petitioner Reliance and Respondent Continental Bank pursuant to which Respondent agreed to purchase from Reliance over $100,000,000 of residential mortgage loans originated by Reliance. The parties' business relationship lasted less than one year, ending with the parties entering into a Settlement Agreement and Release on February 1, 1980 and an Addendum thereto on May 9, 1980.

Two years later, in April, 1982, Reliance, for the first time, sought to avoid the effect of the Settlement Agreement and Addendum and to revive released claims by filing its original complaint. Respondent moved to dismiss. The U.S. District Court dismissed the complaint on September 7, 1982, stating in part:

> Plaintiff's complaint is 51 pages long, contains 17 claims for relief, and consists of 131 paragraphs. In the 17 claims, [Reliance] states numerous alleged grounds for relief including duress, undue influence, breach of fiduciary duty, breach of contract, unconscionability of contract, conversion, account stated, breach of trust, intentional and negligent interference with contractual relations, libel and mutual mistake. It seeks rescission of [the Settlement Agreement] . . . an accounting of funds held by [Continental

> Bank], compensatory damages in excess of $25 million, and punitive damages in excess of $150 million.
>
> The business relationship between the parties has not been a peaceful one; numerous disputes have arisen over the interpretation and application of the terms of [the Purchase Agreement]. The parties' attempts to resolve their differences generated [the Settlement Agreement] between them.
>
> . . .
>
> The court, with some difficulty, has waded through the voluminous complaint, and has carefully reviewed the parties' submissions and the relevant law. It concludes that, despite the length and complexity of the complaint, [Reliance] has not alleged any facts in support of its claims which would entitle it to relief.

Subsequently, Reliance filed its Amended Complaint and the District Court, on March 4, 1983, granted Respondent's motion to dismiss once again. In its second Memorandum (Additional Appendix pp. 1-2) the District Court said:

> The amended complaint has been somewhat streamlined; it is 22 pages long, contains 11 claims for relief, and consists of 93 paragraphs. The court's comparison of the two complaints reveals that the claims raised in the amended complaint, though more concisely stated, are essentially the same as those raised in the original complaint which was dismissed. The facts have in some instances been restated, but no new facts are alleged. Despite the changes made in the amended complaint, the essence of the claims raised remains the same and the court concludes, as it did before, that the complaint fails to state a claim.

On January 26, 1984, the Court of Appeals affirmed the dismissal of Reliance's claims, holding ". . . we believe the District Court properly ruled that no facts could sus-

tain Reliance's claims . . . ." After reviewing each of the eleven claims asserted in the Amended Complaint, the Court of Appeals stated:

> The amended complaint goes no further than charting an unhappy business relationship and stating bare conclusions that Continental ran roughshod over Reliance. Moreover, the settlement agreement conclusively precludes at least six of the eleven claims between Reliance and Continental at issue in the amended complaint. Accordingly, the district court properly dismissed the complaint for failure to state a cause of action. (Additional Appendix p. 10)

SUMMARY OF ARGUMENT

The decision below was totally in accord with long-standing and widely held law that the federal Declaratory Judgment Act creates no new and independent cause of action, but only a new remedy. The Court of Appeals and District Court properly found that Reliance could prove no state of facts entitling it to relief on any of its several claims. The issues raised here by Reliance raise no important questions of federal or state law; there is no conflict between Courts of Appeals on any issues here; the issues here are routine factual, business issues of importance only to the two parties involved and not to the law or society in general. There is no issue of law raised here that justifies the grant of a writ of certiorari.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED AS IT FAILS TO DISCLOSE ANY SPECIAL OR IMPORTANT REASON FOR REVIEW

Reliance fails to show any special or important reason for this Court to grant a writ of certiorari as required by Supreme Court Rule 17. No federal question whatever is involved nor is there any important question of federal law at all, let alone one which is unsettled by this Court. Reliance attempts to create a conflict among federal courts of appeals, but as is shown below, there is none. Reliance presents a fact-laden routine business dispute, contained in a complaint which has been dismissed twice by the District Court and once by the Court of Appeals for the Seventh Circuit. The case is of no significance to society in general and contributes nothing to the development of the law. It is of interest only to the parties here.

I.

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, AND THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, DID NOT ERR IN RULING THAT A DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. § 2201 IS AN ALTERNATIVE FORM OF RELIEF, NOT AN INDEPENDENT CAUSE OF ACTION.

The United States Court of Appeals for the Seventh Circuit, in its unpublished order in this matter below (Additional Appendix, p. 9), stated:

> Finally, count eight fails because Reliance failed to state any proper claims for relief regarding the cer-

> tificate of deposit; a declaratory judgment is an alternative form of relief, not an independent cause of action.

Earlier, the District Court, in its Memorandum supporting the order dismissing the case (Additional Appendix, p. 3), stated:

> In Counts VI and VIII plaintiff seeks an accounting and a declaratory judgment. These counts seek alternative forms of relief on facts which this court finds do not state a claim. Because the forms of relief do not determine whether the party has stated a cause of action, these counts cannot stand independently of the rest of the complaint and must also be dismissed.

These rulings are correct according to well-established law, and there is no conflict among the circuits on this point.

It is apparent from their statements that both courts found Count VIII to be legally inadequate for the simple reason that no facts were alleged sufficient to state a cause of action, without regard to whatever relief was sought.

Reliance claims, however, that both courts below committed error by going on to state that the Declaratory Judgment Act, 28 U.S.C. § 2201 (the "Act"), creates no new, independent cause of action but is remedial only. Beyond the fact that Count VIII was found factually insufficient and properly dismissed for that reason, the additional statements of the courts below are correct. Reliance's erroneous contention arises from its failure to comprehend the elemental distinction between a cause of action and a remedy.

Respondent accepts the definition contained in Reliance's Petition:

> A cause of action, in common legal parlance, is a state of facts which would entitle a person to sustain an action and to seek a judicial remedy on his behalf.

Woodfork v. Marine Cooks & Stewards Union, 642 F.2d 966, 971 (5th Cir. 1981).

The Courts below found Reliance had failed to plead such a state of facts. Further, the Act provides a remedy only; it cannot convert an insufficient set of facts into a well pleaded cause of action.

Professor Moore states:

> The [Declaratory Judgment] Act is remedial and procedural in nature; creates no substantive rights or duties; and neither augments nor diminishes federal jurisdiction.

6A Moore, *Moore's Federal Practice* ¶ 57.05, (2d ed. 1983).

> The federal Declaratory Judgment Act created a new remedy for the courts of the United States in the nature of an all-purpose writ.

Id. ¶ 57.02.

The federal Declaratory Judgment Act was designed to afford courts the power to act in cases where an actual dispute existed regarding the rights and obligations of the parties, but no affirmative, coercive remedy, such as a judgment for damages or an injunction, was appropriate. 10A Wright, Miller & Kane, *Federal Practice and Procedure* § 2751 (2d ed. 1983). Significantly, the headings of 28 U.S.C. §§ 2201 and 2202 are "Creation of remedy" and "Further relief" respectively.

This Court has ruled that "[T]he operation of the Declaratory Judgment Act is procedural only." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240 (1936). The Act does not enlarge federal jurisdiction. *Skelly Oil Co. v.*

Phillips Petroleum Co., 339 U.S. 667, 671 (1950). The several cases cited by Reliance in its brief do *not* support the proposition that the Act creates a new cause of action. They support, in fact, the statement Reliance itself makes but does not understand, on page 10 of its Petition, that the several Courts of Appeals agree the Act "expanded the *remedies* available to the parties in Federal Court." (Emphasis added).

Reliance has misunderstood the Seventh Circuit and the other cited Courts of Appeals as well. There is no conflict between the circuits; they are in agreement and they have interpreted the Act correctly. There is no reason for this Court to grant the writ prayed for.

II.

ARGUMENTS II AND III OF RELIANCE'S PETITION RAISE NO ISSUES OF SUFFICIENT IMPORTANCE TO JUSTIFY REVIEW BY THIS COURT.

Arguments II and III of Reliance's Petition merely assert that as a factual matter the Amended Complaint should not have been dismissed by the District Court, and the dismissal should not have been affirmed by the Court of Appeals. No questions of federal law whatever are raised, let alone any "important question of federal law which has not been, but should be, settled by this Court." Sup. Ct. R. 17.1(c). Nor can it be said that the Court of Appeals "has so far departed from the accepted and unusual course of judicial proceedings . . . as to call for an exercise of this Court's power of supervision." Sup. Ct. R. 17.1(a).

As is shown in the order of the Court of Appeals (Additional Appendix, p. 5), Reliance's original complaint, which contained seventeen claims for relief in 131 paragraphs over fifty-one pages, was dismissed. Reliance's

Amended Complaint, containing eleven claims over twenty-two pages was also dismissed, and the dismissal affirmed. No substantial or unusual questions of law—state or federal—were involved. The courts simply found that Reliance's allegations failed to state any claim for relief on the basis of customary, accepted legal theories.

> It is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance for the public as distinguished from that of the parties . . . .

Layne Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387, 392-93 (1923).

CONCLUSION

For the reasons stated above, this Court should deny the petition for a writ of certiorari.

Dated: June 29, 1984

Respectfully submitted,

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ADDITIONAL APPENDIX

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RELIANCE MORTGAGE CORPORATION,
a Colorado corporation,

Plaintiff,

No. 82 C 2186 *v.*

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, an Illinois corporation,

Defendant.

Before the Honorable **George N. Leighton,**
United States District Judge.

MEMORANDUM

This is a diversity action arising out of an agreement between plaintiff, Reliance Mortgage Corporation (RMC), and defendant, Continental Illinois National Bank and Trust Company of Chicago (CINB), whereby CINB agreed to purchase certain loans from RMC. The cause is before the court on the defendant's motion to dismiss the amended complaint brought pursuant to Rule 12(b)(6), Fed. R. Civ. P. Having carefully reviewed the amended complaint and the parties' submissions, the court concludes that plaintiff has failed to state a claim for which relief can be granted; accordingly the motion to dismiss is granted.

Plaintiff's original complaint in this action was 51 pages long and contained 17 claims for relief set out in 131 paragraphs. It was dismissed by this court for failure to state a claim on September 7, 1982. The amended complaint

has been somewhat streamlined; it is 22 pages long, contains 11 claims for relief, and consists of 93 paragraphs. The court's comparison of the two complaints reveals that the claims raised in the amended complaint, though more concisely stated, are essentially the same as those raised in the original complaint which was dismissed. The facts have in some instances been restated, but no new facts are alleged. Despite the changes made in the amended complaint, the essence of the claims raised remains the same and the court concludes, as it did before, that the complaint fails to state a claim.

In Counts I-III of the amended complaint, plaintiff seeks recission of the settlement agreement entered into on February 1, 1980 and amended on May 9, 1980, on the grounds of duress, undue influence, and unconscionability, respectively. The allegations of the complaint do not support a claim for recission on any of these grounds. Count IV alleges breach of fiduciary duty, but the court can find no facts in the complaint which would support the existence of such a duty. To the contrary, the alleged facts tend to show that the relationship between RMC and CINB was an arms length business relationship, albeit an unhappy one. Counts V and X raise breach of contract claims which are barred by a 1980 settlement agreement which is presently in effect.

Count VII alleges the existence of an unlawful tying arrangement in violation of 12 U.S.C. §1972, and Count IX raises a claim for breach of trust. Both these claims were raised in almost identical form in the original complaint. Both contain new allegations which plaintiff contends make them sufficient to meet the motion to dismiss. However, in both cases, the allegations are mere conclusions which are not supported by the facts. In Count VII plaintiff alleges that CINB's actions with respect to the certificate of deposit are not customary in the banking industry. In Count XI, RMC alleges that the agreement regarding the certificate of deposit created a trust or a resultant trust. Neither of these conclusory allegations is sufficient to create a claim from facts which did not state

a claim previously. In Counts VI and VIII plaintiff seeks an accounting and a declaratory judgment. These counts seek alternative forms of relief on facts which this court finds do not state a claim. Because the forms of relief do not determine whether the party has stated a cause of action, these counts cannot stand independently of the rest of the complaint and must also be dismissed.

Finally, the court notes that in ruling on the motion to dismiss it has applied the standard set down by the Supreme Court in *Conley v. Gibson*, 355 U.S. 41 (1957): "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.* at 45-46. In the court's view, RMC is not entitled to the relief claimed under the facts as alleged. Accordingly, the motion to dismiss the amended complaint is hereby granted and this case is dismissed.

So ordered,

/s/ George N. Leighton
United States District Judge

Dated: March 4, 1983

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
(ARGUED DECEMBER 5, 1983)
January 26, 1984.

Before
Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. JOEL M. FLAUM, *Circuit Judge*
Hon. TERENCE T. EVANS, *District Judge**

RELIANCE MORTGAGE CORPORATION,
a Colorado corporation,

Plaintiff-Appellant,

No. 83-1601 *v.*

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, an Illinois corporation,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 82 C 2186—**George N. Leighton**, *Judge.*

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* The Honorable Terence T. Evans, Judge of the United States District Court for the Eastern District of Wisconsin, is sitting by designation.

ORDER

[Unpublished Order Not To Be Cited
Per Circuit Rule 35]

On May 17, 1979, Plaintiff Reliance Mortgage Corporation contracted with Defendant Continental Illinois National Bank and Trust Company for Continental to purchase more than $100,000,000 of residential mortgage loans originated by Reliance. At the time of that purchase agreement, Reliance was suffering financial difficulties which had caused creditors to accelerate Reliance's indebtedness to them. The business relationship between Reliance and Continental was punctuated with numerous disputes and lasted less than one year. On February 1, 1980, the parties attempted to resolve their problems by executing a settlement agreement and release. On May 9, 1980, the parties executed an addendum to the settlement agreement. The settlement agreement apparently did little to resolve the problems, and in April 1982 Reliance filed this suit to rescind the settlement agreement and recover damages for breaches of earlier agreements.

The district court granted Continental's motion to dismiss Reliance's original complaint, which contained seventeen claims for relief in 131 paragraphs over fifty-one pages. The court concluded that Reliance stated no facts to support any of its claims for relief. Reliance then filed an amended complaint containing eleven claims over twenty-two pages. The district court again dismissed the complaint for failure to state a claim on which relief could be granted. Reliance appeals the dismissal of the amended complaint.

A complaint should not be dismissed for failure to state a claim unless the plaintiff can prove no set of facts entitling it to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Because we believe the district court properly ruled that no facts could sustain Reliance's claims, we affirm the dismissal.

A. Counts One, Two, and Three: Rescission

The first three counts of the complaint allege duress, undue influence, and unconscionability. In count one, Reliance alleges that Continental committed a series of wrongful acts that amounted to duress. Our review of the complaint reveals no facts possibly supporting a claim of duress.

In *Joyce v. Year Investment, Inc.*, 45 Ill. App. 2d 310, 314, 196 N.E.2d 24, 26 (1964), the court defined the current Illinois law of duress, writing:

> The legal conception of economic or compulsory duress is in forcing a person to act against his own will. It does not exist when the person upon whom it has been so charged had an option or choice as to whether he will do the thing or perform the act said to have been done under duress.

See Gecht v. Suson, 3 Ill. App. 3d 183, 278 N.E.2d 193 (1971); *see also Alexander v. Standard Oil Co.*, 97 Ill. App. 3d 809, 423 N.E.2d 578 (1981). The *Alexander* court discussed the narrow application of the duress theory in a business setting, stating:

> [Economic] duress does not exist where consent to an agreement is secured because of hard bargaining positions or the pressure of financial circumstances. Rather, the conduct of the party obtaining the advantage must be shown to be tainted with some degree of fraud or wrongdoing in order to have an agreement invalidated on the basis of duress.

Alexander, 97 Ill. App. 3d at 815, 423 N.E.2d at 582-83.

Reliance has not shown any facts surrounding the negotiation and execution of the settlement agreement tending to show fraud or other wrongdoing by Continental. In fact, the complaint reveals that Reliance made a rational decision to settle its disputes with Continental. The allegations in the amended complaint thus fall well short of stating a claim of duress by one sophisticated business enterprise against another.

In count two of its amended complaint, Reliance seeks recission of the settlement agreement under a theory of undue influence, alleging that Continental breached its fiduciary relationship with Reliance. Under Illinois law, a contract may be rescinded if the agreement was reached through a breach of a confidential relationship. *Swiney v. Womack*, 343 Ill. 278, 175 N.E. 419 (1931).

Reliance clearly cannot establish that Continental owed it a fiduciary duty based on the allegations in the complaint. The facts do not show a relationship built on trust. "A confidential or fiduciary relationship involves confidence and trust on one side and dominance and influence on the other." *Carey Electric Contracting, Inc. v. First National Bank*, 74 Ill. App. 3d 233, 237, 392 N.E.2d 759, 763 (1979). Reliance neither alleges circumstances when Continental exercised dominance over it, nor pleads any facts showing that it put its confidence and trust in Continental. As the district court stated in its first dismissal order, Reliance's amended complaint merely details "a tumultuous and discordant business relationship; one in which it was, by far, the economically weaker party." There are no possible theories to sustain Reliance's allegation that Continental owed it a fiduciary duty. The facts instead tend to show that Reliance and Continental conducted an arms-length relationship with little faith in each other.

Reliance's final attempt to gain recission of the settlement agreement is its claim in count three that the agreement is unconscionable. In Illinois, unconscionability is not merely overreaching by one party, but also an agreement that is unacceptably one-sided. The Illinois appellate court has stated:

> An unconscionable bargain has been defined as one "which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept, on the other." (*Hume v. United States* (1889), 132 U.S. 406, 410, 33 L. Ed. 393, 396, 10 S. Ct. 134, 136; see *Neal v. Lacob* (1975), 31 Ill. App. 3d 137, 334 N.E.2d 435.) The term unconscionability encompasses an "absence of a meaningful

> choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." (*Williams v. Walker-Thomas Furniture Co.* (D.C. Cir. 1965), 350 F.2d 445, 449.) The unconscionability doctrine has been applied most often to prevent instances of commercial sharp practices by parties possessing superior bargaining power.

First Financial Insurance Co. v. Purolator Security, Inc., 69 Ill. App. 3d 413, 419, 388 N.E.2d 17, 22 (1979). In another decision, the court stated: "The term [unconscionable] is used to signify a contract that is improvident, totally one-sided or oppressive." *Neal v. Lacob*, 31 Ill. App. 3d 137, 142, 334 N.E.2d 435, 439 (1975). At the time the settlement agreement was executed, which is the time relevant to our inquiry, *see Bonner v. Westbound Records, Inc.*, 76 Ill. App. 3d 736, 743, 394 N.E.2d 1303, 1308 (1979), the bargain struck could not be considered unconscionable under any set of facts. Continental did not have so great a bargaining advantage, and the consideration was not grossly inadequate. The district court thus properly ruled that this count also fails to state a claim for relief.

B. Counts Four, Five, Six, and Seven: Settled Claims

The 1980 settlement agreement and release purported to resolve the difficulties between Reliance and Continental. Reliance concedes that if the settlement agreement is not rescinded, counts four through seven of the complaint must fail because they all allege wrongdoings by Continental occurring before May 9, 1980, the date of the final settlement. Count four alleges breach of fiduciary duty, count five alleges breach of contract, count six seeks an accounting, and count seven alleges a "tying arrangement" in violation of 12 U.S.C. § 1972 (1978). Because Reliance has failed to state a ground for rescinding the settlement agreement, these four claims are barred by that agreement.

In any case, our review of the complaint reaffirms the district court's conclusion that no facts support these claims. Count four states no allegations or facts establishing a fiduciary relationship. Count seven's allegations are conclusory and state no supporting facts. Count five is barred by the settlement agreement, and count six thus must fail because an accounting is not an independent cause of action.

C. Counts Eight, Nine, and Ten: Certificate of Deposit

The amended complaint alleges that Reliance placed approximately one million dollars into a certificate of deposit pursuant to an agreement with its creditors. Count eight seeks declaratory relief against Continental regarding Continental's appropriation of the certificate of deposit. Count nine alleges a breach of trust. Count ten alleges a breach of contract.

We agree with the district court that the breach of contract claim in count ten is barred by the settlement agreement. The addendum of May 1980 established a course of conduct for disposition of the certificate of deposit which controlled the parties' actions. Reliance alleges that actions by Continental "constitute[d] a breach of the implied covenant of good faith in the contract," yet Reliance alleges no supporting facts and fails to allege whether terms of the settlement agreement were satisfied or breached. Accordingly, the agreement between Reliance and Continental effectively bars count ten.

The breach of trust allegations in count nine also must fail as conclusory and without the support of any facts. In addition, the terms of the settlement agreement indicate, if anything, that the certificate of deposit was established as security for debt rather than as a trust.

Finally, count eight fails because Reliance failed to state any proper claims for relief regarding the certificate of deposit; a declaratory judgment is an alternative form of relief, not an independent cause of action.

D. Count Eleven: Exemplary Damages

None of the allegations or surrounding facts indicate in any way that Continental's actions "were performed with a wanton and willful disregard for the rights of Reliance and were attended by circumstances of malice and insult." This claim thus must fail.

E. Conclusion

The amended complaint goes no further than charting an unhappy business relationship and stating bare conclusions that Continental ran roughshod over Reliance. Moreover, the settlement agreement conclusively precludes at least six of the eleven claims between Reliance and Continental as issue in the amended complaint. Accordingly, the district court properly dismissed the complaint for failure to state a cause of action.

AFFIRMED.